IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Crl.MC.No. 2339 of 2007()

[AGAINST ORDER IN C.M.P.NO.3769/2006 IN C.C.NO.418/2002 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM]

PETITIONER:

P.NANUKUTTAN,
S/O.PEETHAMPARAN. AGED 68 YEARS,
EXECUTIVE MEMBER,
THE CHARITABLE AYURVEDIC AND NATURAL MEDICAL RESEARCH SOCIETY, OTTUKUZHY VEEDU, POOVAR P.O.

BY ADV. SRI.BIMAL K.NATH
SRI.E.M.SUNIL KUMAR
SMT.SMITHA DIVAKARAN

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2339 of 2007

Dated this the 20th day of July 2007

O R D E R

The petitioner complains about the order dated 27/10/2006 by the learned Chief Judicial Magistrate, Thiruvananthapuram. It reads "Petitioner absent. No representation. Petition is dismissed for default." According to the petitioner, this does not represent the true state of affairs. The petitioner was present. His arguments were heard. The petition was for return of property under Section 451 Cr.P.C.

2. Did the petitioner apprise the learned Chief Judicial Magistrate of such error? Why is it that the petitioner is coming to this court only on 19/7/2007 when that order was passed as early as on 27/10/2006 - after the learned Chief Judicial Magistrate has been transferred/promoted from that centre? No satisfactory explanations are forthcoming. I am certainly of the opinion that the order passed by the officer concerned will have to be accepted over the statements made at the Bar at this belated stage. Needless to say, the petition having been dismissed for default, the petitioner's right to move the learned Magistrate again for identical relief under Section 451 Cr.P.C shall now remain.

3. With the above observation, this petition is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007